International Hod Carriers, Building & Common Laborers, Local 872, AFL–CIO (Andrew T. Curd Builders, Inc.) *and* Jesus Enriquez. Case 28–CB–3638

February 17, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On September 30, 1992, Administrative Law Judge William L. Schmidt issued the attached decision. The Charging Party filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] We affirm the judge's conclusion that the Respondent has not violated Sec. 8(b)(1)(B) of the Act. In doing so, Chairman Stephens and Member Devaney rely only on the judge's conclusion that the General Counsel failed to establish that Charging Party Enriquez' termination resulted from union coercion, i.e., the Respondent's insistence that he transfer his union membership to the Respondent. In light of their reliance on that conclusion, Chairman Stephens and Member Devaney find it unnecessary to pass on the judge's conclusion that Enriquez did not possess collective-bargaining or grievance-adjustment responsibilities necessary to establish his alleged status as an 8(b)(1)(B) representative of the Employer.

Chairman Stephens and Member Devaney disavow the judge's remarks in the final paragraph of sec. I,B of his decision.

Contrary to his colleagues, Member Oviatt concludes that the lynchpin of this case is whether Enriquez, who is an acknowledged supervisor within the meaning of the Act, is an 8(b)(1)(B) representative. Clearly, if he is not, no protection flows to him either under the collective-bargaining agreement or under the Act. For the reasons stated by the judge, Member Oviatt agrees with the judge that Enriquez did not possess collective-bargaining or grievance-adjustment responsibilities necessary to establish his 8(b)(1)(B) status and joins the judge in his conclusion that this case presents a most unfortunate situation for which there is no remedy.

Paul R. Irving and *Peter N. Maydanis, Esqs.*, for the General Counsel.

Sandra Rae Benson, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. Jesus Enriquez, an individual, filed an unfair labor practice charge against International Hod Carriers, Building & Common Laborers, Local 872, AFL–CIO (Respondent or Union) on February 7, 1992.[1]

On March 13, 1992, the Regional Director for Region 28 of the National Labor Relations Board (NLRB or Board) issued a complaint alleging Respondent had engaged in an unfair labor practice within the meaning of Section 8(b)(1)(B) of the National Labor Relations Act (Act).[2]

The complaint alleges Respondent unlawfully caused Andrew T. Curd Builders, Inc. (Company or Curd) to discharge Enriquez, a general laborer foreman who represented Curd for purposes of collective bargaining or the adjustment of grievances, because Enriquez refused to transfer his union membership from a related local union to Respondent.

Respondent timely answered the complaint on March 26, denying that it engaged in the unfair labor practice alleged. A hearing on the case thus joined was scheduled before an administrative law judge.

I heard this matter on July 22, at Las Vegas, Nevada. After carefully considering the record, the demeanor of the witnesses, and the posthearing briefs of both parties, I find Respondent did not engage in the unfair labor practice alleged based on the following

FINDINGS OF FACT

I. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

1. Background

Curd, a California corporation headquartered in southern California, is engaged in the building and construction industry as a contractor. At times material here, Curd maintained an office, place of business, and jobsite in Las Vegas, Nevada.[3]

In 1991, Curd entered into a construction contract to build four separate structures at the MGM Grand Hotel in Las Vegas. The value of Curd's work under this contract approximated $70 million. By the time of the hearing, Curd employed some 250 employees at the MGM jobsite and another 150 employees at an offsite plant producing precast concrete products used at the MGM job.

David Anderson, Curd's vice president for operations, manages Curd's Las Vegas operations. Several project managers and job superintendents are employed at the MGM site. Cliff Denmark and Ron Jenkins serve as the project manager and job superintendent, respectively, for the storm drainage box culvert and parking garage projects pertinent here.

Curd normally utilizes union-referred labor. At MGM, Curd employs tradesmen secured from five area craft unions

[1] All dates refer to the 1992 calendar year unless otherwise shown.

[2] Sec. 8(b)(1)(B) provides that it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce ''an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.''

[3] Curd's direct inflow to Nevada in the year prior to the filing of this charge exceeded the dollar volume established by the Board for exercising its statutory jurisdiction over nonretail enterprises. Respondent admits that Curd is engaged in commerce and in a business affecting commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Accordingly, I find that the Board has jurisdiction to resolve this labor dispute.

representing carpenters, cement finishers, structural ironworkers, reinforcing steel ironworkers, and laborers.

Curd is bound by the terms of a so-called Work Continuation Agreement (WCA), essentially a project agreement between MGM and several area labor organizations, including Respondent. The WCA contains detailed understandings, including a specialized grievance procedure, designed to prevent work stoppages during the construction of the MGM facilities. It contemplates that other terms and conditions of employment not specifically covered in the WCA will be as specified in the collective-bargaining agreements between the signatory craft unions and other area employers.

For terms not covered by the WCA, Curd executed a memorandum agreement adopting certain terms of the labor agreement between the Associated General Contractors of America, Las Vegas Chapter, and Respondent. This agreement requires the use of Respondent's exclusive hiring hall but contains no union-security provision.

The WCA grievance procedure provides for grievances to be presented in writing within 5 working days of the occurrence of a dispute to ''a duly designated representative of the Employer and the Business Agent of [the] Union involved.'' If those individuals are unable to resolved the dispute within 3 working days, the dispute is then presented to the joint arbitration board (JAB) for a final and binding decision. The JAB is a five-member panel established under the WCA consisting of two employer representatives, two union representatives, and a neutral.

Prior to commencing the MGM projects, Anderson held a prejob conference with representatives of various craft unions, including Respondent's business manager, Kenneth Smith, to discuss, inter alia, the details of manpower requirements. Anderson and Smith agree that a verbal understanding was reached at this time that Curd could transfer a specific number of key tradesmen previously employed by Curd in California so long as those individuals transferred their union membership to the Respondent in accord with a provision in the constitution of the Laborers' International Union of North America (LIU), Respondent's parent.[4]

This case arose as the box culvert project neared completion and the parking garage project was beginning. Jenkins hired Enriquez, essentially for an indefinite term, as the general laborer foreman on January 15 as work on the MGM parking structure commenced. Previously, the two had been associated in similar capacities at Curd's IKEA parking garage construction project in Burbank, California.

Overall, Enriquez had been employed by Curd for about 3-1/2 years in the Los Angeles metropolitan area. Prior to the MGM job, Enriquez had been Curd's general laborer foreman at the IKEA job noted above. He was laid off at the Burbank job on August 2, 1991, when it neared completion and, save for sporadic trips to Las Vegas in the late fall of 1991 during the setup phase there, he was not employed again by Curd until January 15. Except for a brief period when he transferred to an Orange County, California local, Enriquez belonged to Laborers Local 300 in Los Angeles for 27 years.

[4] That provision provides that union members employed for more than 30 days within the area jurisdiction of a local union other than that in which they hold membership may be required to transfer their membership to the local union in the area where they are employed.

2. Enriquez' employment in Las Vegas

When Enriquez reported for duty on January 15, Jenkins instructed him to immediately report to Respondent's office to be dispatched to the MGM job in accord with prior arrangements between Jenkins and a union official.

Enriquez was accorded priority processing when he went to Respondent's office that morning. However, Enriquez initially balked at transferring his membership from Local 300 to Respondent asserting that he feared a membership transfer would adversely affect his Local 300 pension. Nonetheless, Respondent's business agent, Robert Trenkle, remained adamant about his doing so and, ultimately, Enriquez executed a transfer form. To avoid any necessity for Enriquez to return to Los Angeles, the two agreed that the transfer form would be transmitted by facsimile to Local 300 for the required signature of an official there before final processing by Respondent with the LIU.

After Smith learned from Trenkle later in the day about the facsimile procedure employed to initiate Enriquez' transfer, he told Trenkle of his concern that the LIU would honor only an original transfer document.[5] Sometime later, Trenkle asked Jenkins to inform Enriquez that a ''hard copy'' of his transfer request would be required.

Enriquez claims that when he returned to the jobsite on January 15, he told Jenkins of the membership transfer requirement. Purportedly, Jenkins advised Enriquez that such action was unnecessary, thereby, reviving Enriquez' original reluctance to transfer his membership.[6]

Subsequently, Enriquez telephoned the Local 300 Business Manager Mike Quevedo who also felt the transfer was unnecessary. After Quevedo promised to contact Smith about the matter, Enriquez asked Quevedo to hold his facsimiled transfer. Quevedo agreed to do so and also told Enriquez that, in any event, the LIU would not accept facsimiled transfers.

Seemingly assured that no membership transfer would occur without some further action on his part and that Quevedo planned to intervene with Smith to avoid the necessity for his membership transfer, Enriquez went on about his business for the next 9 days until he was terminated. During Enriquez' tenure on the MGM parking garage project, only two carpenters and one laborer worked at that location. Enriquez, however, spent some of his time on the box culvert project but another foreman supervised laborers there.

3. Pertinent Enriquez' duties with Curd

Both sides acknowledge that Enriquez possessed supervisory authority while employed by Curd. And everyone

[5] The transfer form contains a certification that the member was initiated more than 90 days prior to the transfer and is in good standing at the home local. It also provides for a certification of the date deposited at the new local and a concluding instruction that the ''ORIGINAL'' should be mailed to the LIU at once. Standard procedures contemplate that the member will have the transfer form, properly executed by a home local official, on arrival at the new local.

[6] Jenkins on the other hand claims that he advised Enriquez that everyone working in Las Vegas would have to transfer their book. Curd brought four other California laborer foremen to the MGM project. All received work referrals from Respondent and transferred their membership apparently without incident. Two of those individuals transferred from Local 300. However, all transferred after Enriquez' employment ended.

agrees that Enriquez did not represent Curd for collective-bargaining purposes.

Accordingly, to establish the applicability of Section 8(b)(1)(B), the General Counsel sought to show that Enriquez was vested with authority to adjust grievances. Respondent carefully examined each witness called for that purpose in an effort to show the opposite. Because Enriquez' worked at the MGM job for only 9 calendar days, and as he was given no indication that his duties would differ from those while employed by Curd in California, the General Counsel was permitted, over vigorous objection by Respondent, to inquire about the authority vested in, and exercised by, Enriquez before he worked at the MGM site. The following summarizes that evidence, first as relates to the MGM job and then elsewhere.

Anderson, Curd's highest ranking official in Las Vegas, construes the term ''grievance'' to mean ''a claim brought by a workman . . . to the union that we have violated the terms of the contract.'' Based on this definition, Anderson said that grievances at MGM are initially presented to the job superintendent by a union business agent and if they are unable to resolve it promptly, he becomes involved almost immediately. Failing a resolution at his level, Anderson said that grievances go to arbitration under the WCA. Anderson was aware of no grievance Enriquez handled at the MGM job. From his perspective, foremen have no authority to handle grievances; rather, Anderson said, foremen can only handle ''issues that come up.''

Anderson explained that Curd's foremen do play a role in dealing with everyday working conditions and in that sense they ''head . . . off'' grievances. By way of example, he explained that if a workman wanted a glass of water, foremen generally see that it is provided. If the matter grows into a dispute about the Company's failure to provide water, then such a dispute would be resolved by the job superintendent or himself. By way of further examples, Anderson said that Curd's foremen have no authority to resolve disputes about what is or is not a workman's proper rate of pay or hours of work.

Based on the relationship with Enriquez at the IKEA project in Burbank, California, Jenkins explained that a union steward might approach Enriquez about certain problems but such problems did not include the manner in which Curd applied the terms of a collective-bargaining agreement. Going further, Jenkins asserted that even he did not ''interpret the contract.''

Typically, Jenkins said, if an employee needed some particular type of equipment, such as a mask or a safety belt, they went to Enriquez for it. Beyond such routine matters, Jenkins, too, said Enriquez lacked authority. In fact, Jenkins said that there had been occasions when he warned Enriquez not to get into arguments with the union business agents. Suggesting implicitly that Enriquez' Los Angeles experiences were extraordinary, Jenkins explained that Enriquez knew all of the Local 300 business agents because he had belonged to that union ''forever.''

Citing examples of problems he solved while employed at the MGM project, Enriquez said that he overheard some carpenter employees discussing among themselves the lack of drinking water because the water supply had been shut off due to some work on the site. Enriquez went to the office and arranged with the secretary for the carpenters to use the office water cooler until the outside water supply was turned on again. Enriquez told the carpenters to let him know if they had other problems and he would take care of them.

On another occasion at the same project, one of the laborers complained to him about a broken spray can. Enriquez said that he retrieved some parts from his auto and helped the man fix the spray can.

On the IKEA project, Enriquez said that he resolved numerous employee complaints about the lack of necessary or required equipment such as gloves, boots, safety glasses, and hard hats. When he learned of such complaints, Enriquez said that he would either argue with the employee over it, get the equipment if it was available, or ask Jenkins to place an order for whatever was needed. Enriquez, however, did not order equipment on his own.

Enriquez also said that ''quite a few times'' he resolved employee questions about pay errors and the timekeeping system reflected on paystubs at the Burbank job. Usually, pay error problems were disposed of by reviewing the time records to determine if an error had been made in recording time. If so, Enriquez would instruct Paula, the jobsite secretary, to add time to the next pay period to make up for an error, or he would permit an employee to leave early if the situation warranted.

Enriquez conceded that, at first, Paula would clear any payroll changes with Jenkins but as Paula came to trust him, clearance with Jenkins ceased. Jenkins claimed that Paula always apprised him of such situations and ''would never do anything [of this nature] without consulting [him] personally.''

Other paycheck problems involved explaining the pay- and time-recording scheme to some of the Hispanic laborers who lacked an understanding of the timekeeping system or who could not read the English language.

On the projects where he was employed, Enriquez frequently selected those laborers which Curd hired and laid off. In one instance, Enriquez selected two employees for layoff when a Los Angeles project was moving from one phase to another based on his judgment that the two employees were not qualified for the upcoming work and hired two other employees in their place. The two terminated employees filed an NLRB unfair labor practice charge. During the investigation of the charge, Enriquez provided an affidavit to the NLRB (in Anderson's presence) concerning his reasons for selecting the employees to be laid off. Enriquez played no other role in the matter.

On one occasion, Enriquez employed a laborer from outside the Los Angeles area at a time when the local union business agent was on vacation. When this came to Jenkins' attention, he ordered Enriquez to lay the man off to avoid any disputes with the Union about an improper referral. When the business agent next visited the jobsite, Enriquez told the business agent, apparently in Jenkins' presence, that he wanted to rehire the man and the business agent agreed to the arrangement.

On another occasion at the IKEA project, a Local 300 business agent came to the project and wanted Enriquez to terminate a number of laborers employed without union work referrals. Enriquez had chosen to follow that course because he felt the Union had been referring unqualified applicants. A shouting and shoving scrimmage ensued between Enriquez and the business agent. Jenkins overheard the argument and

ordered Enriquez to the job office to cool down. At the office, Enriquez telephoned Quevedo to report that the business agent wanted him to fire the nonreferred laborers. Quevedo purportedly told Enriquez, ''No, that's not going to happen'' and promised to speak with the business agent upon his return to the Union's office.

When Jenkins came to the jobsite office, he told Enriquez not to argue with the business agents and that he (Jenkins) would handle such matters. Enriquez protested that he was only trying to protect his people and told Jenkins about his call to Quevedo. Nothing further came of the matter at that time.

Later, Jenkins came to Enriquez and told him to send the men to the union office for work referrals. Enriquez assumed that Quevedo had called Jenkins to advise that the Union would clear the disputed employees. Thereafter, Enriquez arranged for the employees to go to the union office in small groups so the job would not be disrupted.

On another occasion, Enriquez came upon a business agent by chance at the IKEA project and informed him that he intended to hire another man and asked that the new laborer be given a work referral. At first the business agent told him that he could not do it but after a brief argument over the matter, the business agent finally agreed to dispatch the man Enriquez wanted to hire. No evidence shows that Jenkins was aware of this incident and the record does not show the chronology of these three referral examples.

4. Enriquez' termination

Between January 15 and 22, numerous discussions took place involving Smith, Quevedo, one or more regional or international union officials and Enriquez. Smith characterized these conversations essentially as pressure by the Quevedo and the other officials to forego enforcing the constitutional membership transfer provision for up to 4 months so Enriquez could assist Quevedo's union reelection effort. Smith claimed that he adamantly resisted the pressure but some evidence noted below indicates Smith succumbed.

On January 22, Smith, Trenkle, and Business Agent Glenn O'Cull visited the MGM jobsite where, among others, they spoke with Jenkins. Enriquez saw the three agents talking with Jenkins but did not overhear what was said. Jenkins said the ''gist'' of the conversation with the union officials was that Enriquez would have to be ''dispatched out of [the] local, and if he wasn't dispatched, then he would have to leave.'' Smith and Trenkle deny that Enriquez' situation was discussed at this time. O'Cull did not testify.

Shortly, if not immediately, after this conversation, Jenkins approached Enriquez and told him that he ''had to be dispatched or he couldn't work in Las Vegas.'' Jenkins said that Enriquez responded by saying that he would talk with Quevedo again.

By Enriquez' account, Jenkins spoke to him twice about the matter; once immediately following the union officials' visit and again the following day. In the first conversation, Jenkins told Enriquez, after some initial confusion, that his transfer had to be at the union office Friday, January 31, and that a facsimile transfer was unacceptable. The following day Jenkins reported to Enriquez that he had been mistaken and that the transfer was due by Friday, January 24. Upon learning this, Enriquez promised to go to Los Angeles that weekend and obtain the transfer document on the following Monday.

When Enriquez reported to work on Friday, January 24, he again complained to Jenkins about the need to transfer his membership because of its potential effect on his pension. This discourse was interrupted by a call for Jenkins and Enriquez used the time to telephone Smith.

By Enriquez' account, Smith told him at this time that there was no way to resolve the membership matter without Enriquez going to Los Angeles to obtain a transfer request. Enriquez then asked if Respondent permitted a certain ratio of local members to travelers on local jobs and received a negative response. Enriquez next asked Smith to explain the problem posed by his employment in Las Vegas and Smith replied, ''I'm not going to have anybody who does not belong to my union . . . telling my men what to do.''[7] Enriquez countered this argument by pointing out that Jenkins belonged to no union at all but Smith was unmoved. Smith told Enriquez that was the way it was and he could ''[t]ake it or leave it.'' Their conversation finally ended after Enriquez told Smith that he would contact an attorney and that Smith would hear from him later.

Smith recalled the Friday telephone call from Enriquez; it was the only occasion Smith spoke to Enriquez directly. He said that Enriquez asked if he had received a call from a particular union official about his transfer and Smith reported that he had not. Smith said that Enriquez felt that it was unnecessary for him to transfer him membership to Las Vegas but Smith explained that this was one of the rules established at the prejob conference. Smith had no recollection of a discussion about a ratio system.

After speaking with Smith, Enriquez resumed his conversation with Jenkins. At this time Enriquez said that he asked if Jenkins wanted him to ''step out of the picture until the people in Los Angeles try [to] resolve [the matter] with the people here?'' Jenkins replied, ''Yeah, why don't you do that.'' Enriquez then went to the secretary and asked for his check.

Afterward, Enriquez returned to Jenkins' office and, by his account, questioned the reciprocal loyalty Jenkins and the Company were showing him. Enriquez acknowledged that by this point he was quite upset. When his check and termination notice were prepared, he objected to the wording because it made it appear that he had quit so Jenkins revised it.[8]

Thereafter, Enriquez said that he returned to the company-provided apartment where he made phone calls to Local 300 and to an attorney. A Local 300 official told him that attempts were ongoing to reach a LIU official in an effort to resolve the matter and that he should stay in Las Vegas. Enriquez agreed to wait for a few hours.

After hearing nothing further by shortly before noon, Enriquez went to the MGM jobsite to return the apartment key and bid Jenkins goodbye. While there, a call came for him from a Local 300 official who reported that the LIU official had spoken with Smith. As reported to Enriquez, Smith

[7] During Smith's testimony, no inquiry was made about this comment.

[8] As revised, Enriquez' termination notice states: ''Laborers Local # 872 insisted that Jesse transfer his book from L.A. Local # 300. Jesse didn't want to transfer due to pension & various other items. Jesse & I thought it might be best to return to Los Angeles.''

had agreed to foregoing the transfer requirement ''at least through June, so you [Enriquez] can go to the [Local 300] election or run for us . . . [w]e told them that we need you up here, and he [Smith] agreed.''

Enriquez then reported the substance of the conversation to Jenkins and asked if he still had a job. Jenkins told him that ''a job was never the issue'' and asked Enriquez for a couple of days ''to find out what's going on.'' Jenkins promised to call Enriquez on Wednesday. Jenkins called Enriquez the following Wednesday and briefly informed him that the Company would not be returning him to the Las Vegas job. Jenkins has not worked for Curd since.

Jenkins explained that on the morning of January 24, Enriquez came to the office in a distraught state, reported that he was ''stressed out,'' and made threats to sue the Company, Jenkins and ''everybody for all this whatever.'' During this outburst, Jenkins, said Enriquez alluded to having been off work for 5 months without getting paid and his belief that during this time he had done several gratuitous tasks for Curd. Following their conversation, Jenkins said he overheard Enriquez voicing essentially the same complaints to Denmark.

After Enriquez received his check and termination notice, and left for the apartment to pack, Jenkins said that he discussed the situation with Denmark and they reached the conclusion that Enriquez would not be rehired.

As a footnote, Enriquez' facsimiled membership transfer request was eventually executed by a Local 300 official, apparently inadvertently, and returned to Respondent which processed it through the LIU. As a consequence, Enriquez is carried on the LIU membership rolls as a member of Respondent, but he has continued to pay dues to Local 300. Enriquez believes Respondent is holding his ''book hostage.'' In any event, at the time of the hearing, Enriquez had been suspended from membership by the LIU for nonpayment of dues to Respondent.

B. *Further Findings and Conclusions*

Following the Supreme Court's decision in *Royal Electric*,[9] the Board clearly recognizes that union discipline of supervisor-members does not violate Section 8(b)(1)(B) unless: (1) the union has or seeks a continuing collective-bargaining relationship with the supervisor's employer; and (2) the disciplined supervisor actually possesses grievance adjustment or collective-bargaining responsibilities. *Carpenters District Council (Concourse Construction Co.)*, 296 NLRB 492 (1989).

In 8(b)(1)(B) cases, the evidence must establish that the collective bargainer or grievance adjuster regularly engages in such activities. *Operating Engineers Local 3 (Kasler Corp.)*, 298 NLRB 214 (1990). Although participation in a formalized grievance system is not required, neither the exercise of supervisory authority by itself nor the resolution of routine personal problems rise to the level of grievance adjustment necessary to confer 8(b)(1)(B) status. *Masters, Mates & Pilots (Marine Transport*), 301 NLRB 526 (1991); *Sheet Metal Workers Local 68 (DeMoss)*, 298 NLRB 1000 (1990).

[9] *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573 (1987).

Briefly summarized, the General Counsel contends that Enriquez ''possessed and exercised the authority to resolve grievances regarding safety matters, equipment problems, payroll disputes, and other disputes regarding working conditions'' at both the IKEA and MGM jobs. Respondent argues that the General Counsel failed to demonstrate Enriquez possessed or exercised authority to adjust grievances within the meaning of the law and that it merely sought here to enforce a lawful internal union rule applicable to Enriquez.

Guided by the principles from the cited cases, I find that Curd has a continuing collective-bargaining relationship with Respondent sufficient to bring Section 8(b)(1)(B) into play, but that Enriquez did not actually possess collective bargaining or grievance adjustment responsibilities necessary to establish his 8(b)(1)(B) status. And even if he did, the General Counsel failed to prove that Respondent caused Enriquez' discharge, as alleged.

The WCA contemplates that grievances will be quickly resolved as a part of an overall scheme designed to prevent work stoppages and disruptions. The concern about work stoppages and disruptions evident in the WCA explains why grievances at the MGM job promptly involve high level decisionmakers. Under this scheme the laborer foremen have no specified role in grievance processing. Moreover, the evidence shows that Anderson carefully monitors all grievance activity involving Curd's employees in Las Vegas and nothing in Anderson's testimony remotely suggests that Curd perceives individuals at Enriquez' level as vested with grievance adjustment authority. From Anderson's perspective, the role of Curd's general foremen is more aptly described as grievance preventers.

Plainly, Enriquez' examples about providing needed equipment and supplies to workmen, as well as his involvement in Curd's payroll operations is little other than an exercise of routine supervisory functions designed to produce smooth, trouble-free operations. If these commonplace supervisory activities fall within the 8(b)(1)(B) ''adjustment of grievances'' penumbra, then I am at a complete loss to understand why the ''reservoir doctrine'' rationale, rejected by the Supreme Court in *Royal Electric*, was necessary in the first place as such a sweeping grievance definition would encompass nearly all supervisors. In my judgment, *Royal Electric* unquestionably precludes this kind of expansive extension of Section 8(b)(1)(B).

Moreover, contrary to the General Counsel's assertion, Enriquez' involvement with employee pay problems at the IKEA project are distinguishable from the activities of Supervisor Tessmer in the *St. Louis Bridge* case.[10] Unlike the facts there, Enriquez merely arranged for the correction of obvious errors caught by employees themselves in a setting where a collective-bargaining agreement actually existed and Jenkins' approval of Enriquez' proposed payroll changes was required, at the very least, in any doubtful situation.

Likewise a close examination of Enriquez' three examples pertaining to work referral problems in Los Angeles are insufficient to confer 8(b)(1)(B) status. To the extent that

[10] *Operating Engineers Local 101 (St. Louis Bridge)*, 297 NLRB 485, 487 (1989), finding Tessmer to be an 8(b)(1)(B) grievance adjuster based in part on his resolution of pay disputes which would have been grievances if a collective-bargaining agreement had existed and in circumstances showing that he was the only company official on the project with authority to resolve such disputes.

Enriquez became embroiled in disputes, his involvement was primarily for the purpose of preserving his own supervisory flexibility and stature.

Far from demonstrating that dispute resolution authority resided in Enriquez, two of the work referral examples show that such authority resided in Jenkins. That point is unmistakable from Jenkins' insistence that one worker not properly cleared through the hiring hall be laid off. The fact that Enriquez subsequently secured a proper referral for this individual is not an example of grievance adjustment as Jenkins saw to it that no grievance arose in the first place.

With respect to the example which involved Jenkins' removal of Enriquez from the scene of an altercation with a business agent over Enriquez' obvious failure to properly follow referral procedures, Jenkins' subsequent admonition that he would take care of such matters again demonstrates that Enriquez lacked grievance adjustment authority.

Furthermore, the evidence suggests that Jenkins, at best, tolerated Enriquez' hiring practices and quickly intervened when he sensed potential difficulties. And some evidence suggests that Enriquez' ability to avoid grievances over these matters related primarily to his long relationship with Quevedo.

The fact that Curd called upon Enriquez to supply factual detail in its defense of an unfair labor practice case does not support the General Counsel's claim here. Even Enriquez acknowledged that he was called upon only to truthfully explain what occurred.

In agreement with Respondent, I conclude that Enriquez did not possess nor exercise authority as Curd's representative ''for the purposes of collective bargaining or the adjustment of grievances'' and, hence, Section 8(b)(1)(B) is not applicable to his termination at Las Vegas.

But even assuming Section 8(b)(1)(B) does apply, I have concluded that the General Counsel failed to establish that Enriquez' termination resulted from union pressure to transfer his membership. On the contrary, the evidence strongly suggests that Enriquez' outbursts on January 24 directed at both Jenkins and Denmark caused his termination.

The evidence shows that as late as January 22, Jenkins expressed some willingness to accommodate Enriquez in connection with straightening out his membership problems. That abruptly changed following the January 24 outburst which Jenkins, at least, interpreted as a threat to sue both Curd and himself. These facts show, in my judgment, that Enriquez' termination is causally connected to the outburst and not to the Union's membership transfer demands.

Although the ineffable quality of Enriquez' solidarity with the labor movement is obviously lost on the petty and contemptible little minds who have conspired to cause his membership suspension after 27 years, that fact is not sufficient to transform this case into a vehicle to correct this indefensible injustice. Therefore, I am compelled to conclude that the Union has not violated Section 8(b)(1)(B), as alleged.

CONCLUSIONS OF LAW

1. Curd is an employer engaged in commerce or a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Enriquez was not Curd's representative for purposes of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act while employed by that firm.

4. Respondent has not restrained nor coerced Curd in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The complaint is dismissed.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.